

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA

**FILED**  
JUL 16 2008  
  
CLERK

SOUTHERN DIVISION

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CITY OF ELK POINT,

Plaintiff,

vs.

JOHN ROMAN,

Defendant and  
Third-Party Plaintiff,

vs.

RYAN FLEEK, Chief of Police  
of the City of Elk Point,  
in his individual capacity,

Third-Party Defendant.

CIV 08-4065

MEMORANDUM OPINION  
AND ORDER RE: REMAND

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The parties have stipulated to remand the claims between the City of Elk Point and John Roman back to State Court as those claims are not properly subject to removal to Federal Court. The parties have stated they would not object to this Court retaining Roman's Third-Party Complaint against Ryan Fleek, now named as a Third-Party Defendant. However, the parties have neither specifically requested that this Court retain the Third -Party Complaint nor provided authority for such a request.

Generally, removability depends on whether a district court would have original jurisdiction of the action based on the cause or causes of action in the Plaintiff's complaint. *See First Nat'l Bank of Aberdeen v. Aberdeen Nat'l Bank*, 627 F.2d 843 (8th Cir. 1980); 28 U.S.C. § 1441(a). Plaintiff's Complaint did not support original jurisdiction in this case.

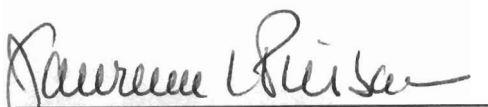
The Complaint in this case is based upon an agreement in which the Defendant John Roman allegedly agreed to reimburse the Plaintiff, City of Elk Point, for training and other expenses relating

to replacing Roman if his employment ended within two years of academy training for reasons other than injury or force reduction. The Counterclaim and Third-Party Complaint allege retaliation and termination of Roman's employment because of his efforts to create a labor union. The Third-Party Complaint alleges that the Third Party Defendant, Elk Point Chief of Police, Ryan Fleek, acting under color of state law violated Roman's Constitutional rights. In addition, the Third-Party Complaint alleges violations of the National Labor Relations Act without specifying the violation of that Act. Because all of the claims arise out a common nucleus of operative facts, the interests of judicial economy appear to be best served by remanding the entire case to State Court. When the National Labor Relations Act claim is more clearly articulated the State Court can determine whether it or the National Labor Relations Board has jurisdiction to consider the claim. *See Stricker v. Swift Brothers Construction Co.*, 260 N.W.2d 500, 504 (S.D. 1977); *see also, Law v. International Union of Operating Engineers Local No. 37*, 373 Md. 459, 818 A.2d 1136 (2003). If it should be determined that this Court has exclusive jurisdiction over any of the Third-Party claims, this Order does not prejudice the Third-Party Plaintiff from commencing an action in this Court. Accordingly,

**IT IS ORDERED** that all of the claims in the above-entitled action are remanded to State Court.

Dated this 16<sup>th</sup> day of July, 2008.

BY THE COURT:



Lawrence L. Piersol  
United States District Judge

ATTEST

JOSEPH HAAS, CLERK

BY:   
DEPUTY